IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs March 14, 2006

# STATE OF TENNESSEE v. MICHAEL JOSEPH HULETT

**Appeal from the Circuit Court for Montgomery County**
**No. 40400394 John H. Gasaway, III, Judge**

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**No. M2005-01875-CCA-R3-CD - Filed May 30, 2006**

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Following a bench trial in the Montgomery County Circuit Court, the Appellant, Michael Joseph Hulett, was convicted of second degree murder and sentenced to twenty-one years in the Department of Correction. On appeal, Hulett contends that the evidence presented was insufficient to support the verdict. Specifically, he challenges the evidence with regard to the mens rea element of "knowingly." After review, we find no error and affirm the judgment of conviction.

**Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed**

DAVID G. HAYES, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ROBERT W. WEDEMEYER, JJ., joined.

Roger E. Nell, District Public Defender, Clarksville, Tennessee, for the Appellant, Michael Joseph Hulett.

Paul G. Summers, Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; John W. Carney, Jr., District Attorney General; and John Finklea, Assistant District Attorney General, for the Appellee, State of Tennessee.

## OPINION

### Factual Background

On the date of this offense, the Appellant was a nineteen-year-old private in the United States Army. Following training, he was deployed to Iraq for one year where he served as a mortarman in the Infantry. During his training and service, the Appellant, who received extensive weapons training, had at least one instance of negligent discharge of a weapon. Upon his return, he was stationed at Fort Campbell, Kentucky.

During his one-month leave following his return from Iraq, the Appellant visited his family in New York. While there, he purchased a 1996 Chevrolet Blazer but, at some point, lost his privileges and was unable to keep the vehicle on base. Arrangements apparently were made to leave

his vehicle with fellow serviceman and squad member Joshua Simpson, who lived at the Walnut Village Apartments in apartment 12. The Appellant apparently also agreed that the victim, Fahmee Donahue, who lived in apartment 20, could use the vehicle. A dispute arose between the Appellant and the victim when the Appellant tried to reclaim his vehicle. On April 8, 2004, the Appellant reported the vehicle stolen, although he did not mention the victim as a suspect.

While off duty on April 10, 2004, the Appellant socialized, consumed alcohol, and played video games with his friend and fellow soldier, Sergeant Charles Dixon. At some point, the Appellant asked Dixon to drive him to the Walnut Village Apartments so that he could collect $50 that the victim owed him. The two left together in Dixon's car with the Appellant carrying a .45 caliber semiautomatic pistol hidden in his waistband. Upon their arrival at the apartments, the Appellant requested that Dixon park across the street.

The Appellant exited the vehicle and proceeded to apartment 12 where Joshua Simpson resided. Appearing calm, he asked the occupants the location of the victim. Upon being told that the victim was in apartment 20, the Appellant proceeded directly across the way and entered the apartment, where the victim was asleep in bed. The Appellant approached the sleeping victim, shot him once in the head at close range, collected the casing, and fled the premises. The victim died instantly as a result of the wound. The occupants of apartment 12, who had heard the gunshot approximately one minute after the Appellant entered apartment 20, saw the Appellant running from the scene and called 911.

Approximately five minutes after he had exited Sergeant Dixon's car, the Appellant returned to the vehicle, still appearing calm, and asked to be returned to the base. During the ride back, the Appellant asked Dixon to stop so that he could urinate. Dixon pulled the car off the road, near Barge Point Road, and the Appellant walked into a wooded area. The Appellant proceeded to bury the pistol and the clip in separate locations approximately eighteen inches apart. The Appellant returned to the car, and, as the two were leaving the area, he threw the spent casing out the window. Upon his return to the base, the Appellant immediately washed the clothes that he had been wearing.

Within hours, the police arrested the Appellant based upon the information given to them by the occupants of apartment 12. He was taken to the police station where he initially requested an attorney, but he later reinitiated discussions with police by asking what sentence a person would get for "blowing a man's head off." The Appellant then gave a statement admitting that he had shot the victim. He provided the police with the location of the pistol, and a search began in the area. The next morning, police located the buried pistol and clip, as well as the spent shell casing the Appellant had tossed from the car window. The Appellant, who was present during the search, commented when the pistol was found, "I am so fucking guilty." Testing of the weapon later determined that the bullet which killed the victim was fired from the recovered pistol.

The Appellant, though admitting that he shot the victim, contended that the shooting was accidental. He stated that he entered the victim's bedroom with his pistol drawn and found the victim asleep. He said that he intended to kick the bed to jar the victim awake; however, he

stumbled, and the pistol discharged, hitting the victim. Testing on the pistol revealed that the safeties were operational and that the pistol did not have a light pull or "hair trigger." Moreover, the medical examiner testified that the gunshot wound was an intermediate wound, meaning that, based upon the rule of thumb, the weapon was from one inch to two and one half feet away from the victim when the pistol was fired.

On June 7, 2004, a Montgomery County grand jury returned a three-count indictment against the Appellant, charging him with: (1) first degree murder; (2) aggravated burglary; and (3) felony murder. The Appellant later waived his right to trial by jury, and a bench trial began on March 21, 2005. Following the presentation of the State's case, the Appellant moved for judgment of acquittal with regard to the aggravated burglary and felony murder counts, which the trial court granted. At the close of the proof, the trial court found the Appellant guilty under Count 1 of the lesser offense of second degree murder. A sentencing hearing was held on July 6, 2005, after which the court sentenced the Appellant to a term of twenty-one years in confinement. This appeal followed.

**Analysis**

On appeal, the Appellant has raised the single issue of sufficiency of the evidence. Specifically, he asserts that the evidence presented was insufficient to support the verdict that he acted "knowingly." In considering this issue, we apply the rule that where the sufficiency of the evidence is challenged, the relevant question for the reviewing court is "whether, after viewing the evidence in the light most favorable to the [State], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *see also* Tenn. R. App. P. 13(e). Moreover, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). This court will not reweigh or reevaluate the evidence presented. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978).

In a bench trial, the verdict of the trial judge is entitled to the same weight on appeal as that of a jury verdict. *State v. Horton*, 880 S.W.2d 732, 734 (Tenn. Crim. App. 1994). Thus, a guilty verdict by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State. A convicted defendant has the burden of demonstrating that the evidence is insufficient. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

The Appellant was convicted of second degree murder which is defined as "[a] knowing killing of another." T.C.A. § 39-13-210(a)(1) (2003). All homicides are result of conduct offenses. *See generally State v. Ducker*, 27 S.W.3d 889, 896 (Tenn. 2000) (holding second degree murder is a result of conduct offense). "A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result." T.C.A. § 39-11-302(b) (2003).

On appeal, the Appellant contends that the evidence presented does not support a conviction for second degree murder because there is no proof that he acted "knowingly." Rather, he argues that the only proof presented regarding his mental state was his testimony that the weapon accidentally discharged, which would support, at best, a conviction for reckless or negligent homicide. He further argues that his version of events is bolstered by the fact that he had prior instances of accidental discharge of a weapon during his military service. As noted, the Appellant testified that he did not intend to shoot the victim but rather stumbled and the weapon discharged. It is true that the only direct testimony regarding what actually occurred in the victim's bedroom came from the Appellant. We acknowledge that the Appellant's version of the event would in fact support a lesser offense than that of second degree murder. However, what the Appellant's argument fails to recognize is that the trial court, as the trier of fact, was free to reject his testimony based upon a credibility determination. He also fails to acknowledge that the testimony of the medical examiner, that the weapon was likely fired from one inch to two and one half feet from the victim's head, contradicted his testimony that he was near the doorway of the room when the weapon discharged. Clearly, based upon the verdict of second degree murder, the trial court rejected the Appellant's testimony that the shooting was accidental. The credibility of a witness is a factual issue resolved by the trier of fact, and we will not reweigh or reevaluate such determinations on appeal. *Cabbage*, 571 S.W.2d at 835.

The proof presented at trial established beyond a reasonable doubt that the Appellant entered the victim's bedroom and fired a weapon while the victim slept. Indeed, the Appellant concedes that he fired the shot which killed the victim, only disputing his mental state at the time the trigger was pulled. However, after review, we find that the evidence presented at trial, viewed in the light most favorable to the State, was more than sufficient to establish that the Appellant knowingly fired the weapon. The proof adduced established that the Appellant and the victim were involved in a dispute over the Appellant's vehicle, of which the victim apparently had possession. On the day of the murder, the Appellant left his barracks with a loaded weapon and got a ride with his friend, Sergeant Dixon, to the victim's apartment. He asked Dixon to park across the street from the apartment complex and calmly exited the vehicle before proceeding to apartment 12, where he asked for the victim. Upon learning that the victim was in apartment 20, the Appellant walked directly across the way and entered that apartment. He entered the victim's bedroom with the safety on his weapon disengaged, despite his extensive military training to do otherwise, and pointed the pistol at the victim's head. Moreover, the medical examiner's testimony indicated that the weapon was fired from close range, and expert testimony revealed that the weapon did not have a "light pull" trigger. Testimony further revealed that in order for the weapon to fire, the Appellant had to manually chamber a bullet and overcome two safety mechanisms. Following the shooting, the Appellant retrieved the spent casing and fled the building. On the return trip to the base, he disposed of his weapon in a hidden area, and, when he arrived at the base, he washed the clothes he was wearing. The Appellant's actions, both before and after the murder, support an inference of his intent to commit the offense. Considering these facts, we find the evidence more than sufficient to establish that the Appellant acted knowingly with the intent to cause the result, *i.e.*, the death of the victim.

Accordingly, the evidence is sufficient to support the Appellant's conviction for second degree murder.

## CONCLUSION

Based upon the foregoing, the Appellant's conviction for second degree murder is affirmed.

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DAVID G. HAYES, JUDGE